A.F.R

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench :- Hon'ble Shri Vijay Kumar Shrivastava, J.

Civil Revision No. 58 of 2006

Applicant Tenant	Smt. Usha Joshi @ Usharaj Joshi, Aged 51 years, R/o Bilaspur (CG).
	Versus
Non-Applicant Landlord	Smt. Saroj Awasthi, Wd/o Late Manik Lal Yadav, R/o Bilaspur (CG).

Present :- Shri Vimlesh Bajpai, counsel for the applicant.

Shri Sanjay K. Agrawal, Advocate with Shri Saurabh Sahani, counsel for the non-applicant.

ORDER

(Dated 7th November, 2006)

This revision under Section 23-E of the Chhattisgarh Accommodation Control Act, 1961 (henceforth "the Act") has been filed by the tenant (applicant) against the order dated 28-2-2006 passed by the Rent Controlling Authority, Bilaspur (henceforth "the Authority"), in case No.6/A-90(6)/2003-04, vide which recovery of possession and arrears of rent has been allowed in favour of non-applicant.

(2) Facts material for disposal of this revision are that non-applicant Smt. Saroj Awasthi claiming herself to be a landlord in accordance with Section 23-J of the Act filed an application under Section 23-A of the Act for eviction of applicant-tenant from the suit accommodation, *inter alia* pleading that she *bona fide* require the accommodation for her residential purpose. The accommodation has been rented @ Rs.800/- per month to tenant (applicant) who, despite service of notice by registered post did not vacate the suit accommodation.

(3) Applicant after obtaining permission to contest the application for eviction filed by non-applicant filed written statement. Tenant-applicant in

her written statement disputed the relationship between non-applicant and herself being landlord & tenant and also stated that non-applicant is residing in her another house situated at Devnandan Nagar along with her family and does not require the suit accommodation *bona fide*.

(4) In support of landlord's case documentary and oral evidence has been led by the non-applicant whereas in rebuttal no evidence has been adduced by the tenant-applicant. Learned Authority after appreciating the evidence decided the dispute in favour of landlord/non-applicant holding that she is the owner of suit accommodation, she has no other accommodation for her residence in the city, she is living in a rented accommodation and requires the suit accommodation *bona fide*, passed the impugned order of eviction and also passed order for payment of arrears of rent.

(5) Applicant-tenant denied the relationship of landlord and tenant in between non-applicant and herself on the ground that although she is tenant of the suit accommodation, but owner/landlord of the suit accommodation is son of non-applicant namely; Vikas Awasthi. Vikas Awasthi has been examined by non-applicant, who in his evidence has deposed that in May, 2003 his mother Saroj Awasthi rented the suit accommodation to applicant Smt. Usha Joshi at a rate of Rs.800/- per month. He was realizing the rent. Smt. Saroj Awasthi in her statement categorically stated that she let the suit accommodation to Smt. Usha Joshi at a rate of Rs.800/- per month and the rent was realized by her elder son Vikas Awasthi. Document A-13 acknowledgment of partition and Exhibit A-17 receipt in favour of Saroj Awasthi issued by Municipal Corporation, Bilaspur also corroborates the stand of non-applicant, that she is the owner/land lady of the suit accommodation. The statements of both the witnesses have not been rebutted by adducing evidence by the

tenant-applicant. On the other hand, applicant-tenant was served with notice Ex-A/9, in para one of the notice it was mentioned that the house in possession of applicant was owned by Smt. Saroj Awasthi. Reply sent by tenant-applicant is Ex-A/12, in para one of her reply she did not deny the ownership, on the contrary, she stated that she is residing in your house known as Shyam Sadan. In whole of the reply, she did not challenge the relationship, but from her reply, it is clear that Vikas Awasthi was realizing rent on behalf of his mother.

(6) Here in the instant case applicant not only failed to rebut the evidence of landlord/non-applicant but on the other hand, has admitted the said relation of tenant and landlord in between her and non-applicant. Learned Authority after minutely appreciating the evidence and material on record has correctly held that in between applicant and non-applicant the relationship of tenant and landlord exists.

(7) Smt. Saroj Awasthi in her statement categorically stated that she is living in a rented house of Ram Kumar Soni, she has taken the house at a rate of Rs.1,800/- per month, she has no other suitable accommodation in her possession. Her evidence has been corroborated by statement of Vikas Awasthi. So far as house situated at Devkinandan Nagar is concerned, from the statement of both the witnesses it is evident that the said house is used for residence of Vikas Awasthi and his family. Learned Authority after due appreciation of the evidence accepted the contention of non-applicant that she is living in a hired house and has no other suitable accommodation of her own in her possession for her residence.

(8) Section 23-D (3) of the Act reads as under :

> **"Procedure to be followed by Rent Controlling Authority or grant of leave to tenant to contest.**—(3) In respect of an application by a landlord it shall be presumed, unless the contrary is proved,

(65)

> the requirement by the landlord with reference to clause (a) or clause (b), as the case may be of section 23-A is bona fide."

(9) From the aforesaid provision, it is crystal clear that unless contrary is proved, the *bona fide* requirement of landlord is presumed to be correct. Here in the instant case, neither from any material brought through cross-examination of witnesses adduced by non-applicant nor by adducing any evidence, the burden that lies on applicant/tenant has been discharged. Therefore, from the un-rebutted presumption as well as from the evidence on record it was to be accepted that requirement of suit accommodation of non-applicant was bonafide, and learned "Authority" correctly hold so.

(10) In revisional jurisdiction of this Court, this Court has been authorized to examine the legality, propriety or correctness of the impugned order and I am of the opinion that the order passed by the learned Authority rests on sufficient reliable evidence and does not call for any interference.

(11) In the result, the revision is liable to be dismissed and is accordingly dismissed.

(12) Parties to bear their own cost.

Sd/-
V.K.Shrivastava
Judge

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